

IDA MAE ROSE  
LEO G. COMER

IBLA 83-105

Decided May 23, 1983

Appeal from a decision of the Alaska State Office, Bureau of Land Management, holding lands proper for acquisition by NANA Regional Corporation. F 14851-A.

Appeal dismissed.

1. Alaska Native Claims Settlement Act: Appeals: Generally--Rules of Practice: Appeals: Timely Filing

Regulation 43 CFR 4.401(a) authorizes a 10-day grace period for the filing of documents required under 43 CFR, Part 4, Subpart E, if the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Where the final day of the grace period is a Saturday and the following Monday is a Federal holiday, a document filed on Tuesday, if timely transmitted to the proper office, meets the requirements of the regulation.

2. Alaska Native Claims Settlement Act: Appeals: Generally--Res Judicata--Rules of Practice: Appeals: Failure to Appeal

A prior decision of the Department will not be overturned by the Board of Land Appeals where the claimant has failed to appeal such decision and in essence acquiesced to the decision for a prolonged period of time.

APPEARANCES: Ida Mae Rose and Leo G. Comer, pro sese; Robert Charles Babson, Esq., Office of the Regional Solicitor, Anchorage, Alaska, for BLM.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

On August 26, 1982, the Alaska State Office, Bureau of Land Management (BLM), issued a decision holding lands described therein to be proper for

acquisition by NANA Regional Corporation, Inc., successor in interest to Deering Ipnatchiak Corporation, and approving such lands for conveyance pursuant to section 14(a) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(a) (Supp. IV 1980).

A copy of this decision was sent by certified mail, return receipt requested, to "Ida Mae Ross [sic]" at 8815 188th Avenue, SE, Snohomish, Washington 98290. A copy of this decision was also sent by certified mail to Leo G. Comer at the identical address, return receipt requested. Copies of the return receipts show that each decision was received by Jay Comer on August 30, 1982. The BLM decision provided that a party receiving service of the decision shall have 30 days from receipt of the decision to file an appeal in the Alaska State Office, BLM.

By letters dated September 26, 1982, and mailed on the following day, Ida Mae Rose filed notices of appeal with NANA Regional Corporation, Inc., and the State of Alaska, Department of Natural Resources. Leo G. Comer, appellant Rose's son, mailed a notice of appeal on September 27, 1982, to the NANA Regional Corporation, Inc., by letter dated that same day. All letters appear to have been received on September 30, 1982. In these letters, appellants assert ownership of the Old Channel No. 1 and No. 2 mining claims (F 60998 and F 60999). By a cover letter dated October 7, 1982, NANA Regional Corporation, Inc., forwarded to BLM the notices of appeal it had received from appellants Rose and Comer. These notices were received by BLM's Alaska State Office on October 12, 1982.

Regulation 43 CFR 4.22 provides that a document is filed in the office where the filing is required only when the document is received in that office during the office hours when filing is permitted and the document is received by a person authorized to receive it. Appellants' notices of appeal are, accordingly, regarded as being filed with the Alaska State Office on October 12, 1982. Counsel for BLM has moved to dismiss these appeals as untimely.

[1] Whenever a document is required to be filed within a certain time and it is not received in the proper office during that time, the delay in filing will be waived if the document is filed not later than 10 days after it was required to be filed and it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. 43 CFR 4.401(a).

Under the terms of BLM's decision of August 26, 1982, and 43 CFR 4.411, appellants' notices of appeal were due in the Alaska State Office on or before September 29, 1982. <sup>1/</sup> As noted above, they were, in fact, filed there

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<sup>1/</sup> Appellants are regarded as having been served with BLM's decision on Aug. 30, 1982. Under regulation 43 CFR 4.401(c)(1), service of a document may be obtained by sending the document by registered or certified mail, return receipt requested, to appellants' address of record in BLM.

on October 12, 1982. The grace period set forth in 43 CFR 4.401(a) authorizes this Board to waive a delay in filing if, inter alia, the notices were received by BLM on or before October 9. In computing the 10-day grace period, the last day of the period (October 9) is to be included unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. 43 CFR 4.22(e). October 9, 1982, was a Saturday, the 10th a Sunday, and October 11 was Columbus Day, a Federal legal holiday. The grace period, therefore, ran until October 12 in the present case, and appellants' filings were received in the grace period.

Although the notices of appeal were received during the 10-day grace period provided by 43 CFR 4.401(a), appellants cannot invoke its provisions. The regulation authorizes waiver of a filing delay if it is determined that the document was transmitted or probably transmitted to the office in which the filing is required before the end of the period in which it was required to be filed. Appellants, however, transmitted their notices of appeal not to the BLM Alaska State Office, where filing was required, but rather to the State of Alaska and to NANA Regional Corporation, Inc. Transmittal to the proper office did not take place until after September 29, 1982, contrary to regulation. Appellants' delay in filing cannot, therefore, be waived. Cf. Omar Stratman, A-30565 (Feb. 23, 1966). Counsel's motion to dismiss this appeal as untimely is granted. The timely filing of a notice of appeal is required to establish the jurisdiction of the Board to review the decision below. The failure to file the appeal pursuant to regulation mandates dismissal of the appeal. Galen B. Brazington, 59 IBLA 255 (1981).

Were we to decide this appeal on its merits, we note that the aforementioned mining claims in which appellants assert a property interest were declared null and void by a BLM decision dated December 18, 1980. A copy of this decision is included in the case file. Counsel asserts that no appeal was ever filed in this matter. Appellants' brief statement of reasons 2/ alleges that appellant Rose was born and raised on the Old Channel No. 1 and No. 2 mining claims on the Inmachuk River at the junction to Arizona Creek. Appellant Rose states that she wishes to retain this area, her home. BLM maintains that its decision of December 18, 1980, having never been appealed by appellants, has now become final. Counsel maintains in a further motion to dismiss that through appellants' failure to exhaust their administrative remedies, the principles of estoppel, laches, and res judicata, as merged in the doctrine of finality of administrative action, preclude appellants from attacking the validity of BLM's December 18 decision in these collateral proceedings.

[2] We agree. The point that counsel makes is that a prior decision of the Department will not be overturned by this Board where the claimant has failed to appeal such decision and in essence acquiesced to the decision for a prolonged period of time. Appeal of State of Alaska, 3 ANCAB 11, 85 I.D. 219 (1978). In the absence of compelling legal and equitable reasons for reconsideration, the principle of res judicata and its counterpart,

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2/ Although brief, the notice of appeal may be construed as a statement of reasons contrary to the contentions of counsel for BLM.

finality of administrative action, will bar consideration of a new appeal arising from a later proceeding involving the same claim and issues. Ben Cohen, 21 IBLA 330 (1975). Appellants offer no reasons for their apparent failure to appeal BLM's decision of December 18, 1980.

It should be noted that if the only interest in lands claimed by appellants and affected by BLM's decision of August 26, 1982, were the aforementioned mining claims long since held to be null and void, appellants would be found to lack a property interest in land sufficient to confer standing under 43 CFR 4.410(b). Appeal of John F. Thein, 4 ANCAB 116, 87 I.D. 1 (1980).

Any property interest which appellants might have in these lands based on section 14(c) of ANCSA 3/ is properly determined in a judicial forum. In Appeal of James W. Lee, 3 ANCAB 334, 343 (1979), appeal pending, Lee v. United States, No. A79-336 (D. Alaska), the Alaska Native Claims Appeal Board (ANCAB) stated:

[W]hile an appeal based on a claimed interest created by § 14(c) of ANCSA, supra, is premature if filed before issuance of interim conveyance, the Board lacks jurisdiction to decide such an appeal filed after interim conveyance has issued. The result is that there is no administrative appeal process available to claimants under § 14(c), and such claims must be brought in a judicial forum.

See also Circle Civic Community Association, Inc., 67 IBLA 376 (1982).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's motion to dismiss on the grounds that the notice of appeal was untimely filed is granted.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Will A. Irwin  
Administrative Judge

James L. Burski  
Administrative Judge

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3/ Section 14(c) states in part: '(1) \* \* \* [T]he Village Corporation shall first convey to any Native or non-Native occupant, without consideration, title to the surface estate in the tract occupied as of December 18, 1971 \* \* \* as a primary place of residence, or as a primary place of business \* \* \*.'

